IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

WP(C).No. 33755 of 2007(R)

EP 37/05 in OS.473/2003 of MUNSIFF COURT, KOTTARAKKARA

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PETITIONER:

P.P. BABU, S/O. PURUSHOTHAMAN,
AMBIKA BHAVAN, KAKKAKOTTOOR MURI,EZHUKONE VILLAGE.

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENT:

SIVARAMAN, S/O. NARAYANAN,
VALLIVILAKATHU VADAKKATHIL VEEDU,
PADINJATTINKARA MURI, KOTTARAKKARA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.33755 of 2007

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Dated this the 22nd day of November, 2007.

JUDGMENT

This Writ Petition is filed to set aside the order passed by the Munsiff, Kottarakkara in E.P.No.37 of 2005 in O.S.No.473 of 2003. Grievance of the writ petitioner is that though he has submitted that he has no means to pay the amount, the court has not considered it, but merely recorded that it is satisfied with the means of the judgment debtor and ordered arrest. Learned counsel had produced before me for perusal the counter filed by him before the court wherein there is a specific plea of no means. It is true that in spite of that the judgment debtor has been paying Rs.1,000/- regularly almost every month. This Court had occasion to consider whether the preparedness to make payment in instalment will be a ground to hold that there is means and it has been held that it will not be a piece of evidence to hold that the person is having means to pay the entire decree debt.

2. Therefore, the order suffers from serious infirmities and hence I set aside order and remit the case back to the Executing Court and direct that court to consider the means of the writ petitioner and pass appropriate orders. The court can also consider whether instalment facilities can be given as provided under Order 20 Rule 11(2) of C.P.C. if there is consent for the decree holder. Since I am disposing of the matter at the admission stage itself, the court shall fix a date of hearing for the decree holder after the appearance by the judgment debtor and dispose of the matter in accordance with law. The writ petitioner is directed to appear before the court below on 18.12.2007. Needless to say that the arrest warrant shall not be executed until further decision is taken by the court.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 22/11